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5 **UNITED STATES DISTRICT COURT**

6 **DISTRICT OF ARIZONA**

7 UNITED STATES OF AMERICA, } Case Nos.: CR 11-0794-TUC-RCC-CRP
8 } Plaintiff, }
9 } vs. }
10 } SINSEROS' REPLY TO GOVERN-
11 } MENT'S RESPONSE TO SISNEROS'
12 } OBJECTIONS TO THE PSR
13 } Assigned to Hon. Rainer Collins
14 }
15 }

16 Comes now Defendant, DINO SISNEROS, by and through his attorney, undersigned,
17 and hereby provides this reply to the government's response (*Doc. 961*) to his previously filed
18 amended objections to the PSR (*Doc. 951*).
19

20 **Paragraph 4:**

21 While it is true "some of the properties were listed for sale for a period of time without
22 being sold and then subsequently sold...at a much higher price," no property was sold to a
23 "straw buyer," as the government asserts. The higher prices were due either to physical
24 improvements or market value increases that had nothing to do with misconduct on Mr.
25 Sisneros' part. The misconduct in this case was in loan applications, not sales prices.
26

27 Once again, the government's "example of how the process was accomplished" using
28 the Panorama home leaves us puzzled. First, it is false that Robert Irwin was told he would be
paid \$10,000.00 for each home he purchased (unless the government is referring to some written
terms of an agreement between himself and Mr. Sisneros which documented a legitimate

1 agreement. Dino was advised by counsel, and attempted to, put everything in writing). Nor was
 2 he told he would “not have to be responsible for mortgage payments.” He was told he would
 3 receive rental payments which could be used for mortgage payments. Additionally, the
 4 payments to Quiroz were not “kickbacks;” but the government is free to try to prove they were at
 5 sentencing. Most importantly, the fact the property did not initially sell for \$399,900 but later
 6 sold for \$550,000 is not explained by the government. Was there a bogus appraisal involved? If
 7 not, did the property sell at its appraised value? If so, where is the fraud? Perhaps the lender
 8 colluded with the defendants?

9
 10 The government’s example is stillborn. There were material misrepresentations in loan
 11 applications but not price fraud.
 12

13 **Paragraphs 5 and 6:**

14 Defendant acknowledges the term “straw buyers” appears on page 12 of his plea
 15 agreement, but maintains there were no “straw buyers” in this case. The actual applicable clause
 16 in the plea agreement states, “material false statements were submitted on behalf of the loan
 17 applicants OR straw buyers.” *Doc. 852*, p. 12, emphasis added. Hence, Defendant agrees there
 18 were “loan applicants” or “straw buyers,” but affirmatively tells this court there were only “loan
 19 applicants,” and no straw buyers. The existence of “straw buyers,” whatever that undefined term
 20 means, will need to be proven by the government prior to sentencing. *See Fed.R.Crim.P.*
 21 32(i)(3)(B) and U.S. v. Showalter, 569 F.3d 1150, 1159-60 (9th Cir. 2009), “when a defendant
 22 raises objections to the PSR, the district court is obligated to resolve the factual dispute, and the
 23 government bears the burden of proof.”
 24

25 As to the Cookes, the government now admits they were not recruited by Defendant.
 26 Defendant never met the Cookes. Dino acquiesced to the Cookes because Chad Ayers affirma-
 27
 28

tively told Dino he had a “power of attorney” on behalf of the Cookes (Ayers’ grandparents).
 1
 The Cookes were not “straw buyers” and even if the government can establish evidence they
 2
 were (and again, the term is not defined) certainly the government cannot prove Defendant acted
 3
 with knowledge the Cookes were “straw buyers.”
 4

Finally, Larry Steers was referred to Dino. Steers personally told Dino he was buying
 5 Pontatoc and Eastland as investment properties and rented out the units on Eastland, later listing
 6 the Eastland property and selling it for a profit. As to Pontatoc, it went into foreclosure because
 7 the rental payments Dino made to Steers were used by Steers for his own purposes and not used
 8 to pay the mortgage. Mrs. Steers admitted this in an interview with the IRS. Further, Mr. &
 9
 10 Mrs. Steers lived in the La Oesta property as an owner/occupant (and are believed to still live
 11 there). Under any definition, straw buyers do not live in the subject property for years and years.
 12
 13

Paragraph 7:

The government quotes from Sisneros’ plea agreement (*Doc. 852*, p. 12), but read
 15 carefully, Sisneros hasn’t admitted he knew Quiroz was submitting false applications and other
 16 documents on Sisneros’ behalf, though he now recognizes that happened. He reiterates, there
 17 never was an agreement between himself and Quiroz that Quiroz would place false information
 18 on any loan application.
 19
 20

Paragraph 8:

The government is free to attempt to prove Straight Rate Painting and Remodeling was
 22 a “fraudulent business” that submitted “fraudulent invoices” to qualify for mortgages, but
 23
 24 Defendant again asserts the business was fully legitimate and produced no fraudulent invoices.
 25

Paragraph 9:

See the comments under paragraphs 5 & 6 above.

1
2 **Paragraph 11:**

3 The government's characterization of what Villalba "testified generally about" has no
4 weight. The Court is referred to Exhibit 1 of Defendant's Sentencing Memorandum (Defen-
5 dant's Opening Brief in the appeal of Judge Jorgenson's case, Argument 6 therein). However,
6 should this Court consider it, the government's reference to Villalba's testimony in Judge
7 Jorgenson's case is a further concession by the government the evidence from that case is
8 **intertwined in this case** and should be considered "relevant conduct" for purposes of a
9 mandatory concurrent sentence.

10 **Paragraphs 13 and 17:**

11 The Court is directed to the Restitution section of Defendant's *Sentencing Memoran-*
12 *dum*. Defendant knows what he stipulated to but asserts the Court has an independent statutory
13 duty to determine restitution.

14 As to property values being inflated; they were not. Once again, the government has
15 never asserted the values of the property were falsely inflated via bogus certified appraisals. If
16 not through false appraisals, how then were they inflated?

17 This case is now over five years old. The government is invited to show the property
18 values on any of the properties involved in this case were inflated, if it can do so, but the
19 government surely has no evidence to support its repeated empty assertions. In fact, the
20 government's response makes the following nonsensical statement, "Regardless of any appraisal,
21 the sales price for these transactions was clearly falsely inflated because the sales were not
22 legitimate." *Response* at 5, lines 6-7. That is a completely illogical statement; a *non sequitur*.

The government is also free to attempt to prove all the other assertions it lists in its response to paragraphs 13 and 17. The Defendant is especially interested for the government to come forth with evidence, undisclosed over these past five years, that any purchaser was told he/she/they “would not be responsible for making mortgages payments.” That never happened.

Finally, the “more than \$1,000,000 in gross receipts from one financial institution” adjustment is no longer factually supported since the appearance of the FDIC as a victim.

Paragraph 32:

Transparently seeking to convince this court it is proper to sentence Defendant consecutively, the government is recalcitrant in its newfound position, adopted only in the 11th hour and only for purposes of Dino’s sentencing, that the conduct from Judge Jorgenson’s case is not intertwined in this case. It furthers its subterfuge referring to the admission of evidence in Judge Jorgenson’s case as “other act” evidence (p.5, line 18) despite Judge Jorgenson and the government both considering the evidence “inextricably intertwined” at the time. The Court should not bite on this change of course but instead hold the government to live up to the now “inconvenient truth”¹ to which it heretofore clung.

The government ends by stating the obvious, as if it is pivotal, namely, “these victims are separate and distinct from the financial institutions and other entities who were victims in this case” (p.6, lines 1-2). But that is no point at all. All the victims in both cases are “separate and distinct” from one another. However, they are all victims of the same scheme/course of conduct.

Paragraph 53:

As to Bayou Investments, LLC and Powerhouse Investments, LLC, the government

¹ The reference is to the Al Gore *Global Warming* documentary. By analogy, the government, for five years, has espoused global warming, but suddenly now is a naysayer.

1 has presented no evidence to prove its allegations these companies, recognized by the Arizona
2 Corporation Commission, are “fraudulent.” These companies have never been found by any
3 administrative agency or court to be “fraudulent.”

4 **Advisory Guidelines Calculation:**

5 Upon further research, Sisneros agrees, as pointed out in his *Sentencing Memorandum*,
6 the guidelines calculation should reflect, under the Grouping guideline, the loss from Judge
7 Jorgenson’s case. However, the Court must honor the sentencing range (0-36 months) stipulated
8 to by the parties in the plea agreement.

9 **Defendant’s Recommended Sentence:**

10 Because the conduct in both case meets both definitions of relevant conduct, Defendant
11 must be sentenced concurrently.

12 **Defendant’s Failure to File Income Taxes:**

13 Still, the government has not shown Sisneros owed taxes or that, if he did, he willfully
14 failed to file tax returns. Further, the government has not refuted Sisneros’ assertion he did not
15 file returns under advice of counsel pending the IRS presenting him with a tax bill, which it
16 never did. However, given Judge Jorgenson’s order that Sisneros file timely and accurate tax
17 returns as a condition of supervised release in her case, Sisneros does not object to a parallel
18 order in this case.

19 Additionally, the government apparently agrees Defendant should not have a condition
20 of supervised release prohibiting him from using alcohol. In fact, 18 U.S.C. 3563(b) only autho-
21 rizes a court to order a defendant to “refrain from excessive use of alcohol.” This Court should
22

23 ///

24 ///

1 impose, if at all, a condition of supervised release only prohibiting excessive use of alcohol.

2 The bottom line is, the government bears the burden of proof on all objections lodged
3 by the defendant to items in the presentence report. U.S. v. Showalter, 569 F.3d 1150, 1159-60
4 (9th Cir. 2009). If the government fails to prove the truth of the matters under objection, they
5 should be from the PSR. Alternatively, the Court may affirmatively declare “the court will not
6 consider the matter in sentencing.” Rule 32(i)(3)(B).

7
8 RESPECTFULLY submitted this 30th day of December, 2016

9 /x/ Chris J. Kimminau

10 Chris J. Kimminau, Attorney for Dino Sisneros

11 Copy emailed this 30th day of December, 2016 to:

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